

EDUCATION DURING A PANDEMIC: Principles for Student Data Privacy and Equity

The COVID-19 global health crisis introduced several concerns for students, their families or caregivers, and school staff during the Spring 2020 school semester. As schools continue to start school virtually and develop virtual contingency plans, many are adopting new or relying on existing technology platforms to deliver educational services. When developing plans for safely returning to school in-person and attempting to meet local, state, and federal mandates, schools are making broad requests for sensitive information from students and staff. Additionally, many schools are incorporating technology programs that collect sensitive information to prevent the spread of COVID-19. For example, some schools have adopted technology that tracks student location for adherence to social distancing policies or require students and staff to enter their health information into an app every day. Schools must consider the potential benefits of such programs as well as the associated equity and privacy risks they pose to students, and the heightened risks posed to marginalized students. However, the burden of safely reopening schools in-person should not fall solely on school administrators and local leadership. State and federal policymakers must provide schools with the resources and guidance they desperately need so that schools can reopen—physically and virtually—in a safe, equitable, and privacy-protective manner.

Data and technology-driven efforts to educate students during the pandemic and combat COVID-19 will only succeed if students and families trust that schools have adequate privacy and equity safeguards in place. Without trust, students and families will not feel comfortable disclosing sensitive data or engaging in an online classroom. Experts in education, healthcare, disability rights, civil liberties, and data protection agree that schools should be guided by principles that center student equity and privacy when schools collect data or adopt technology to mitigate student and staff risk of contracting COVID-19. Specifically, we recommend that schools:

- 1 Support Inclusion and Nondiscrimination.** Schools must not discriminate, reinforce biases against, or profile students based on race, color, national origin, citizenship, religion, disability, sex, sexual orientation, gender identity, or any additional protected statuses. For example, schools should not decide whether students should attend school in-person based on the above-outlined statuses. Instead, schools should assess each student's individualized needs in light of COVID-19 and ensure the health, safety, well-being, and success of each child is a priority. Additionally, the decisions of the student's parents, guardians, or students over 18 about whether a student should attend school in-person or virtually should be carefully considered and respected.

2 Address Trauma. Many students have experienced heightened trauma due to the conditions created by COVID-19 and may face some difficulty reacclimating to the school environment and learning. Students should be provided with trauma support and should not be penalized based on the assumption that they will engage in disruptive behavior (for example, by separating students from their peers or placing students in alternative or virtual learning environments). If a student requires support, such as accommodations for trauma-related behaviors, students should be provided with the necessary resources to ensure placement in the least restrictive environment and most integrated setting appropriate, in accordance with the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and other applicable statutes and regulations. Placing a student in a more restrictive setting due to trauma-related behavior not only raises concerns about violations of these laws but also amounts to penalizing the student for experiencing trauma, and may further aggravate that trauma.

3 Ensure Technology and Subsequent Data Use is Evidence-Based. Any technology adapted or adopted to assist with online learning or help mitigate the spread of COVID-19, such as education technology applications, video-conferencing tools, contact tracing applications, thermal imaging, temperature scanning, or health wearable technology should be evidence-based, evaluated for efficacy and in alignment with all applicable laws. Technologies that collect particularly sensitive data like health information or biometric data should only be deployed in consultation with experts and community stakeholders, including students, families, educators, disability rights organizations, legal counsel, and experts in privacy and equity. Schools should work to ensure that their educators and staff are using only school- or district-approved technologies in their classes

4 Only Collect Necessary Health Data. Any COVID-19 related requests for or collection of the health information of students, their families, or school staff must be narrowly tailored to the information necessary to determine whether an individual has or does not have COVID-19 or whether a requested reasonable accommodation or modification related to COVID-19 is necessary. The data must be collected, used, shared, and retained to the minimum extent required by law, to address the COVID-19 pandemic. If information relating to a student's mental health is collected—whether through surveys or monitoring students through school accounts, devices, or online activity—schools should work with students and their families and ensure that: (1) requests for this information are narrowly tailored to the information necessary for identifying available student support services; (2) information is available only to personnel who directly administer or deliver such support services; and (3) the information is used to craft an individualized plan for appropriate mental health services where necessary. There should be follow up to ensure necessary student services have been provided by the school district and are being accessed by the student (should the student and their family choose to engage with these services).

5 Contextualize Health Symptoms. If schools adopt measures for screening students and school staff for COVID-19 symptoms, they should consider that many other illnesses or disabilities that do not put others at risk may cause high temperatures and other symptoms consistent with COVID-19. Health status inquiries can be extremely sensitive, and students or school staff should not have to disclose health information where others can overhear; access to the disclosed health information should be limited to those who need it.

6 Create Data Governance Policies. Schools should have a governance system that designates rules, policies, and procedures and identifies the individual or group responsible for decision-making regarding:

- a. What data is collected, who has access, how the data will be used, and when it will be destroyed;
- b. Establishing policies and procedures that limit the discriminatory or biased collection and use of data;
- c. How to interpret and act upon data collected;
- d. Securely sharing data, especially if data will be shared with others outside of the school, with clear responsibilities and accountability, as well as consequences for those who violate these data-sharing protocols;
- e. Transparency and access rights for students and their families; and
- f. How those who have access to the information will be trained and know how to effectively and ethically use, protect, and secure it.

7 Limit Sharing Personal Information. Any information shared with authorities such as state and local public health officials should be limited to a narrowly-tailored and documented public health purpose in accordance with the requirements and limitations of and in compliance with all applicable statutes and regulations. School staff should have access to the minimum information necessary to fulfill their roles and responsibilities. Schools should only share de-identified or aggregated information with the broader school community and the general public about COVID-19 diagnoses or likely cases in the school community. Privacy concerns should not prevent the disclosure of de-identified information about COVID-19 cases that can empower community members to adequately protect themselves and policymakers to make evidence-based decisions.

8 Be Transparent. Schools should develop clear, publicly available processes outlining how the data gathered by schools, directly or through technological means, to address COVID-19 or educate students during the pandemic will be collected, used, shared, and protected. Students and families should be provided with clear, timely information about how students will be monitored and evaluated in a virtual classroom, the rights that families have to access, review, and correct the data collected, and how families can dispute any decisions made using the data.

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Final Decisions Should Be Made by Humans. Decisions should never be made solely based on results obtained from technology. Technologies adopted to combat the pandemic by, for example, analyzing symptoms or tracking location, are imperfect and can produce false positives. Similarly, as with any technology, information gleaned from technologies that facilitate virtual learning, such as learning analytics indicating a student’s attentiveness or engagement, should not be the sole measure of a student’s performance or abilities. Final decisions about whether students may be showing signs of COVID-19, whether a student has violated a pandemic-related policy, or whether an administrative intervention is required should be made by a collaborative group who can take into account the student’s particular needs, health status, and circumstances, and include the student, their parent or guardian, and school administrators such as school-based health professionals and counselors.

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Empower Students and Families. Students and families should play a role in the return to in-person school decision-making process. They should also be provided with access to the information collected about them during the COVID-19 pandemic, and an opportunity to appeal individualized educational or health decisions that rely on this information.

Signatories:

- » Autism Society of America
- » Autistic Self Advocacy Network
- » The Bazelon Center for Mental Health Law
- » Center for Public Representation
- » CoSN - the Consortium for School Networking
- » Council of Parent Attorneys and Advocates
- » Digital Promise
- » Disability Rights Education & Defense Fund
- » Family Online Safety Institute
- » Future of Privacy Forum
- » InnovateEDU
- » Mental Health America
- » National Association of Councils on Developmental Disabilities
- » National Association of School Psychologists
- » National Center for Learning Disabilities
- » National Disability Rights Network
- » National Education Association
- » National PTA
- » New America’s Open Technology Institute
- » Public Advocacy for Kids
- » School-Based Health Alliance
- » Southern Poverty Law Center
- » The Advocacy Institute
- » The Arc of the United States
- » The National Council on Independent Living